

OPINION
48-75

August 13, 1948 (OPINION)

GAME AND FISH

RE: Governor's Proclamation

Your letter of August 10, 1948, relative to the taking of deer in this state has been received and noted.

In your letter you state:

"In thinking of the coming proclamation I have decided if it were possible to close an area around a few of the important towns located within the territory which will be open for the taking of deer, and have the right to do this under the proclamation, it would be a safety measure that has been neglected in the past, but should be considered at this time.

This is particularly true because of our experience of last year when letter than thirty thousand deer hunters created a congested situation in the territory. We have reason to believe that as many or more deer hunters will again take to the field this fall. With high powered rifles dangerous up to two miles, I would like to close an area of a radius of approximately two miles around the more important cities.

Can this be taken care of merely by proclamation, or would posting these areas as rest areas be necessary? I would be very appreciative of receiving an early report."

As noted in former opinions, the order or proclamation issued by the Governor has the force of law and it should be further noted that in the section providing for limitation on the Governor's powers no provision is included as to where the game may be taken. In fact, section 20-0803 (3) definitely provides that the Governor shall designate in what places the same may be taken. In other words, it would appear that the Governor does possess the power to designate the territory around a village or city as a rest area as indicated in your letter.

It is further our opinion that in passing upon this question, we must take into consideration the provisions of section 20-1106 of the 1943 Revised Code, which provides:

"The commissioner shall mark all game farms, state game refuges, breeding grounds, and resting places under this protection, and no person shall mutilate, destroy, tear or pull down, or shoot at any such designating mark or other special or general warning sign or card. Any violation of this section shall constitute a misdemeanor."

This statute requires the game and fish commissioner to mark the rest area by the erection of some designating mark or other warning sign or card. Hence, it would appear that to give effect to the

Governor's proclamation, your office would be required to post that territory designated in the proclamation as a rest area. It is my belief that the failure to so mark the rest area would make prosecution impossible because the average hunter would be unable to determine where the border line would run.

I trust this will satisfactorily answer your inquiry.

NELS G. JOHNSON

Attorney General